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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No._____

IN THE

Supreme Court of the United States

October Term, 1987

KENNETH LANCASTER,

Petitioner,

vs.

BUERKLE BUICK-HONDA CO.

Respondent.

On Petition for a Writ of Certiorari
to the United States Supreme Court
From the Eighth Circuit Court of Appeals

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

Can rights under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq., be waived by a private, unsupervised release, knowingly and voluntarily executed, where there is a bona fide factual dispute over liability?

PARTIES TO THE PROCEEDING

Petitioner:

Kenneth Lancaster

Respondent:

Buerkle Buick-Honda Co.

RULE 28.1 LISTING

Buerkle Buick Company d/b/a
Buerkle Buick-Honda Co. (parent)

Buerkle Motor Co. d/b/a
Buerkle Acura (subsidiary)

Buerkle Buick Leasing Co.
(Subsidiary)

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	i
Rule 28.1 Listing	ii
Table of Contents	iii
Table of Authorities	iv
Statutes	iv
Proceedings Below	1
Statement of the Case	2
Reasons for Denying the Writ	4
I. There Is No Conflict Among the Circuits	4
II. This Case Does Not Involve an Important Question of Federal Law	5
III. The Court of Appeals Correctly Interpreted the Decisions of this Court in Determining that ADEA Rights May be Waived By a Private Unsupervised Release	6
IV. A Valid Release Under the ADEA Does Not Have to Mention the ADEA by Name	11
V. The Waiver Was Free and Voluntary Whether Title VII Standards or Ordinary Contract Principles Are Used	13
VI. Even If the Waiver Were Defective, Plaintiff's Substantive Claims Are Legally Deficient	14
Conclusion	14

TABLE OF AUTHORITIES

Cases	Page
Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290 (1985)	9,10
Alexander v. Gardener-Denver Company, 415 U.S. 36 (1974)	12
Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981)	9,10
Brooklyn Savings Bank v. O'Neil, 324 U.S. 697 (1944)	6,7,10
Lancaster v. Buerkle Buick-Honda Company, 809 F.2d 539 (8th Cir. 1987)	1,5,12
Lancaster v. Buerkle Buick-Honda Company, 39 F.E.P. Cases 721, 6 E.B.C. 2635 (D. Minn. 1985)	1
Lyght v. Ford Motor Company, 643 F. 2d 435 (6th Cir. 1981)	12
Moore v. McGraw-Edison Company, 804 F.2d 1026 (8th Cir. 1986)	4,12
Pilon v. University of Minnesota, 710 F.2d 466 (8th Cir. 1983)	12
Runyan v. National Cash Register Corporation, 787 F.2d 1039 (6th Cir. 1986)	4,6,12,15
Samman v. Wharton Econometric Forecasting Associates, Inc. 577 F. Supp. 934 (D.D.C. 1984)	12,13
D.A. Schulte, Inc. v. Gangi, 328 U.S. 108 (1945)	7,8,10
Strand v. Garden Valley Telephone Company, 51 F. Supp. 898 (D. Minn. 1923)	8,9,10

STATUTES

Age Discrimination in Employment Act of 1967 29 U.S.C. § 621(b)	11

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PROCEEDINGS BELOW

On September 20, 1985, defendant Buerkle Buick-Honda Co. filed a motion for summary judgment on the grounds that the release signed by plaintiff was valid and enforceable, or in the alternative that plaintiff's claims were insufficient as a matter of law. On November 27, 1985, Judge Diana Murphy granted defendant's motion for summary judgment on the grounds that the release signed by plaintiff was a bar to this action. *Lancaster v. Buerkle Buick-Honda Co.*, 39 F.E.P. Cases 721, 6 E.B.C. 2635 (D. Minn. 1985). On January 21, 1987, the United States Court of Appeals for the Eighth Circuit affirmed the lower court. *Lancaster v. Buerkle Buick-Honda Co.*, 809 F.2d 539 (8th Cir. 1987).

STATEMENT OF THE CASE

This is an age discrimination case. Respondent, Buerkle Buick-Honda Co. ("Buerkle"), is a car dealership. Mr. Lancaster was hired as Buerkle's service manager at the age of 41 on July 1, 1971. He remained in that position throughout his employment. Based on the recommendations of an independent consulting firm in 1983, the entire service department was reorganized and Mr. Lancaster's employment was terminated. Mr. Lancaster was 53 years old.

Mr. Lancaster was notified of his termination by David Calderwood, the Company's General Manager, on Friday, December 30, 1983. During that meeting Mr. Lancaster was presented with a letter of termination and a letter of resignation that offered six months' severance pay in exchange for a release.

Mr. Lancaster knew the decision to terminate him was irrevocable. He knew he was not entitled to any severance pay or medical insurance premiums under any contract or company policy, and he knew he would not get any severance pay unless he signed the release. Mr. Lancaster told Mr. Buerkle, the President and Owner, and Mr. Calderwood, that six months' severance pay was grossly inadequate. He told them that if he got one year's severance pay they would never hear from him again.

Mr. Lancaster left the meeting for a short time to take care of a customer. When he returned, Mr. Calderwood told him that they would give him twelve months' severance pay. Mr. Lancaster said that twelve months' severance pay was acceptable.

On or about Wednesday, January 4, 1984, Mr. Calderwood called Mr. Lancaster to set up a meeting at

plaintiff's home at which the separation agreement could be finalized. Mr. Calderwood met with Mr. Lancaster at his home on January 4, 1984, five days after Mr. Lancaster's termination. During these five days Mr. Lancaster did not contact a lawyer because he believed it would not have helped.

During this meeting Mr. Lancaster was presented with a revised Separation Agreement and Release that had been redrafted to reflect the increase in severance pay from six months to one year. Mr. Lancaster obtained the following changes to the agreement:

1. Buerkle agreed to increase severance pay from six months to one year, totaling $38,972.50.
2. Buerkle agreed to change the base rate for one year's severance pay from 1983 to 1984, a higher amount.
3. Buerkle agreed to let Mr. Lancaster work for a competitor if he so chose.
4. Buerkle agreed not to contest any claim for unemployment compensation, even though Mr. Lancaster was receiving one year's salary as severance pay.
5. Buerkle agreed to pay plaintiff's medical insurance premiums for six months.

The Separation Agreement and Release signed by Mr. Lancaster provides in part:

> You hereby release the company, its officers and employees from each and every claim of any kind which you may have, or hereinafter may have resulting from your termination of employment by the company. . . .

After signing the release Mr. Lancaster was given a check for $29,229.37, representing the first installment of his severance pay. Buerkle did not lie to Mr. Lancaster to get him to sign the release. He was not forced to sign the agreement. He was not threatened with physical force and physical force was not used to get him to sign the release. He signed the release because he wanted the money.

Notwithstanding the clear and unambiguous language of the January 4, 1984 release, Mr. Lancaster filed this action on October 12, 1984, claiming the release was invalid.

REASONS FOR DENYING THE WRIT

I. *There Is No Conflict Among The Circuits.*

In *Runyan v. National Cash Register Corporation,* 787 F.2d 1039 (6th Cir. 1986) the Sixth Circuit, sitting en banc, carefully analyzed all of the relevant legislative history and case law and determined that ADEA claims may be waived without supervision where there is a dispute as to liability under the Act. In *Runyan,* the court further held that to determine whether the plaintiff knowingly and voluntarily waived his ADEA claims, ordinary contract principles apply. Subsequently, in *Moore v. McGraw-Edison Company,* 804 F. 2d 1026 (8th Cir. 1986) the Eighth Circuit adopted the reasoning in *Runyan* and held that where there is a fact dispute over intent and motivation, an ADEA claim may be waived without supervision. The court further held that a settlement of a fact dispute in that fashion does not compromise the policies of the ADEA, in the absence of fraud, deceit, or unconscionable overeaching, and is in accordance with encouraging amicable arm's length settlements of private disputes. In

this case, a different panel for the Eighth Circuit reaffirmed *Moore* and *Runyan.*

There are no other Circuit Court opinions on this issue. There is no conflict among the circuits and no compelling reason for this Court to consider the issue.

Moreover, recent proposed rules promulgated by the EEOC specifically exempt ADEA settlements from EEOC supervision. The EEOC examined the case law, the legislative history and purpose of the ADEA and found the remedial purpose of the statute would be better served by allowing the unsupervised settlement of disputes between employers and employees. The EEOC rejected as inappropriate the FLSA non-waiver standard and adopted the Title VII "voluntary and knowing" standard. 50 Fed. Reg. 40870-71 (1985).

II. *This Case Does Not Involve an Important Question of Federal Law.*

It is conceded that the issue of whether claims under the ADEA may be waived through an unsupervised release where there is a factual dispute over liability has not been decided by this Court. However, this issue does not involve fundamental constitutional rights; rather, it involves principles of contract law and statutory interpretation.

Recently, this Court denied certiorari in the *Runyan* case. 107 S. Ct. 178. The issues in *Runyan* are identical to the issues in this case. Consequently, this Court has previously determined that this issue is not of sufficient import to warrant review.

III. *The Court of Appeals Correctly Interpreted the Decisions of this Court in Determining that*

ADEA Rights May be Waived by a Private Unsupervised Release.

Plaintiff claims that all settlement agreements and releases relating to potential claims under the ADEA are invalid except those supervised by the EEOC or the courts. Plaintiff has not cited any cases interpreting the ADEA to support his contention. Rather, plaintiff relies on cases interpreting the FLSA to support his analysis. A close examination of these cases shows plaintiff's reliance is misplaced.

The first case plaintiff relies on is *Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697 (1944). The issue presented in *O'Neil* was:

> [W]hether in the absence of a bona fide dispute between the parties as to liability, respondent's written waiver of his right to liquidated damages under § 16(b) [of the FLSA] bars a subsequent action to recover liquidated damages. We are of the opinion that it does not bar such claim.

324 U.S. at 704. In *O'Neil* there was no dispute with respect to liability under the FLSA. *Id.* at 700-04. The only issue before the Court was whether an employee could take less than the statutory amount pursuant to a settlement agreement and release. This Court held that an employee cannot waive his right to amount owing under the FLSA with respect to an undisputed claim. This Court reasoned that to allow such a compromise would be contrary to the Congressional policy to ensure employees are paid the statutory minimum wage. *Id.* at 707, 712-13.

The *O'Neil* Court specifically left open the issue of whether a settlement agreement and release could waive rights under the FLSA where there is a bona fide dispute

between the parties. This Court noted:

> Our decision . . . has not necessitated a determination of what limitation, if any, § 16(b) of the Act places on the validity of agreements between an employer and employee to settle claims arising under the Act if the settlement is made as a result if a bona fide dispute between the two parties, inconsideration of a bona fide compromise and settlement. Neither of the above mentioned cases presented such issues for our consideration.

324 U.S. at 714. The *O'Neil* decision was expressly limited to situations in which there was no dispute as to liability under the FLSA.

The next case cited by plaintiff is *D.A. Schulte, Inc. v. Gangi,* 328 U.S. 108 (1945). In *Gangi* this Court identified the issue as follows:

> The primary issue presented by the petition for certiorari is whether the Fair Labor Standards Act precludes a bona fide settlement of a bona fide dispute over the *coverage* of the Act on a claim for overtime compensation and liquidated damages where the employees receive the overtime compensation in full.

Id. at 110 (emphasis added). In *Gangi* there was a bona fide dispute over whether the employer was covered by the FLSA. If the FLSA applied to the employer, there was no dispute that the employees were entitled to the money. *Id.* at 111-12. The *Gangi* Court stated:

> [W]e think the remedy of liquidated damages cannot be bargained away by bona fide settlements of disputes over *coverage. Nor do we need to consider here the possibility of compromises in other situations which may arise,* such as a dispute over

> the number of hours worked or the regular rate of employment. [Citing *Strand v. Garden Valley Telephone Company,* 51 F.Supp. 898 (D. Minn. 1943)] . . . .
>
> We think the purpose of the Act, which we repeat from the *O'Neil* case was to secure for the lowest paid segment of the nation's workers a subsistence wage, reach the conclusion that neither wages nor the damages for withholding them are capable of reduction by compromise of controversies over *coverage.*

Id. at 114-116 (emphasis added). The *Gangi* decision was limited to situations in which there was a bona fide dispute with respect to applicability or coverage of the FLSA to a particular employer.

In *Strand v. Garden Valley Telephone Company,* 51 F.Supp. 898 (D. Minn. 1923), the case referenced by the *Gangi* Court, Judge Vogel considered the issue of whether an employer could obtain a valid and enforceable release where there is a legal issue regarding the number of hours subject to the FLSA. The *Strand* court noted:

> The dispute is a legal one, not one of fact. There is no honest dispute between the plaintiff and the defendant as to the hours on duty, but merely as to the legal effect of a part of those hours.
>
> . . . .
>
> Had the plaintiff Strand and the representatives of the defendant gotten together, discussed their dispute as to such hours, and if they had agreed, the facts not being clear, that she had expended so many hours in her work, and it had been agreed that that was the fact, and there was no definite method of ascertaining that such agreement did

> not represent the truth, then I think this defendant might have been able to settle or compromise such honest dispute, and that such compromise or settlement would have been binding.

Id. at 904-05. Therefore, under *Strand,* a bona fide factual dispute as to liability under the FLSA may be compromised and settled.

The case law at the time of the passage of the ADEA in 1967, as demonstrated above, had not directly addressed the validity of releases under the FLSA where there was a bona fide dispute between employer and employee with regard to *liability* under the FLSA. If, as according to petitioner, FLSA decisions were incorporated by reference into the ADEA at the time of its passage, then this issue regarding disputes as to liability was similarly left open under the ADEA. Even the cases subsequent to the passage of the ADEA cited by petitioner have not addressed this issue.

In *Barrentine v. Arkansas-Best Freight System, Inc.,* 450 U.S. 728 (1981) this Court held that submission of a wage issue under the FLSA to an arbitration panel pursuant to a collective bargaining agreement did not bar a subsequent proceeding in District Court for unpaid minimum wages. This Court questioned the ability of labor arbitrators to decide legal issues and interpret statutes since a substantial portion of labor arbitrators were not lawyers and expressed concern over the limitations inherent in the labor arbitration forum. 450 U.S. at 730, 743-44.

In *Tony and Susan Alamo Foundation v. Secretary of Labor,* 471 U.S. 290, 85 L.Ed.2d 278 (1985) this Court again was confronted with the issue of whether claims under the FLSA could be settled and compromised where

there was a bona fide dispute over the *coverage* of the FLSA with regard to commercial activities of a religious foundation. Again, if there was coverage, there was no question that the amounts claimed were due. Again, if there was coverage, there was no question that the amounts claimed were due. *See* 471 U.S. at _____, 85 L.Ed.2d at 282-84.

In summary, under *O'Neil, Gangi,* and *Alamo Foundation,* claims under the FLSA cannot be compromised and settled if liability is undisputed or if the only dispute is whether the employer is covered by the FLSA. *Barrentine* merely stands for the proposition that a labor arbitration hearing is not an appropriate forum for FLSA claims. None of the cases cited by petitioner directly address the issue of whether claims under the FLSA can be compromised and settled where there is a bona fide dispute as to liability. To the contrary, *Strand* suggests such a settlement would be valid and binding. Petitioner is not only asking this Court to apply FLSA decisional law wholesale to the ADEA, but it is asking this Court to extend that law beyond its limits *and* apply it to the ADEA.

It is important not to lose sight that this case involves the ADEA, *not* the FLSA. Although the enforcement mechanisms may be the same or similar, the purposes underlying these statutes are vastly different. The Court in *Gangi* stated that the purpose of the FLSA was to secure for the lowest paid segment of the nation's workers a subsistence wage. 328 U.S. at 119. The reason the Supreme

Court read a non-waiver provision into the FLSA was to ensure the low-wage worker did not receive less than the minimum wage and overtime payments mandated by statute. In contrast, the purpose of the ADEA is to prevent age discrimination.

Because the purposes of these two statutes are different, it is inappropriate to transplant decisions interpreting the FLSA on a statute that does not share its purposes and policies. Furthermore, Mr. Lancaster does not fit within the class the Supreme Court was trying to protect when it read an antiwaiver provision into the FLSA. Mr. Lancaster was a highly paid employee who received a substantial amount of money in exchange for a full and complete release. A compromise of a claim such as Mr. Lancaster's does not offend the public policy of the FLSA. Moreover, the settlement of ADEA claims is in accordance with the goal of the ADEA, which is to obtain the voluntary and expeditious resolution of disputes by encouraging employers and employees to "find ways of meeting problems arising from the impact of age on employment." 29 U.S.C. § 621 (b).

It is also important to remember that the ADEA does not contain an anti-waiver provision. Consequently, absent a clear Congressional directive or purpose, such an anti-waiver provision should not be lightly inferred.

IV. A *Valid Release Under the ADEA Does Not Have To Mention the ADEA by Name.*

Mr. Lancaster suggests the release in this case is not valid because the ADEA is not specifically mentioned in the language of the release. An examination of the cases cited by Mr. Lancaster does not support this conclusion.

This Court in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) held that "an employee may waive his cause of action under Title VII as a part of a voluntary settlement." *Id.* at 52. This Court further noted that such agreements are valid as long as the settlement was "voluntary and knowing." *Id.* at 52 n.15.

The next case cited by Mr. Lancaster is *Lyght v. Ford Motor Co.*, 643 F.2d 435 (6th Cir. 1981). In *Lyght*, the court noted "Lyght's Title VII suit cannot be characterized as the action on one who is sued merely because he became dissatisfied with the payment with which he settled." *Id.* at 439. The *Lyght* court further noted that an employee may waive his cause of action under Title VII as a part of a voluntary settlement as long as that settlement was voluntary and knowing. *Id.* 439, 441.

Nothing in either of these cases requires a release of a Title VII claim to specifically mention Title VII by name. Plaintiff cites no cases under the ADEA supporting his position. To the contrary, both the Sixth Circuit in *Runyan*, 787 F.2d 1039, and the Eighth Circuit in *Moore*, 804 F.2d 1026, and in this case, *Lancaster v. Buerkle Buick*, 809 F.2d 539, 540-41 (8th Cir. 1987) have expressly held the ADEA need not be specifically mentioned for a release to be valid and binding. *See also Pilon v. University of Minnesota*, 710 F.2d 466 (8th Cir. 1983) (release that did not specifically mention Title VII claims that was given in exchange for a payment of $1,500.00 barred any further actions under Title VII); *Samman v. Wharton Econometric Forecasting Associates, Inc.*, 577 F.Supp. 934, 934-35 (D.D.C. 1984) (general release that did not specifically mention Title VII claims was valid).

The separation agreement and release signed by Mr. Lancaster in this case provides in part:

> You hereby release the company, its officers and employees from each and every claim of any kind which you have, or hereinafter may have resulting from your termination of employment by the company . . . .

Despite Mr. Lancaster's characterization of this release as "a very general, broad release" the release in clear and unambiguous language is narrowly drawn to cover only claims arising out of plaintiff's termination from employment. Under Mr. Lancaster's proposed interpretation, employers would be required to prepare a laundry list of all the Federal statutory and common law causes of action under which an employee could conceivably bring an action. This is not the law.

Based on applicable case law, it is not necessary for a release to specifically mention the ADEA to be valid and binding. The release in this case is even more narrowly drawn than the one in *Samman* and the consideration given was substantially greater. The release unambiguously releases all of Mr. Lancaster's claims relating to his employment.

V. *The Waiver Was Free and Voluntary Whether Title VII Standards or Ordinary Contract Principles Are Used.*

Mr. Lancaster argues that requiring supervised waivers of ADEA claims is necessary because older workers have diminished bargaining power, may be unaware of their rights, may be financially insecure, and may have bleak prospects for re-employment. However, with respect to the above, older workers are no different than members of other protected classes. Because the Supreme Court has

expressly approved unsupervised waivers for Title VII plaintiffs, there is no reason to prohibit unsupervised waivers for ADEA plaintiffs.

The release signed by Mr. Lancaster was voluntary and knowing. In exchange for the release, Buerkle agreed to pay Mr. Lancaster nearly $39,000, provided six months of paid medical insurance, and provided other benefits. The release is written in clear and unambiguous language. Before Mr. Lancaster signed the release, he read it, negotiated more favorable terms for himself, including a doubling of the severance pay originally offered, and had five days to think about it. The agreement contains no ultimatums or deadlines for its acceptance. Mr. Lancaster was a well-paid management employee who had experience in business and had signed a number of contracts in his lifetime. He could have refused to sign the release and filed suit. He chose to sign the release. No one forced him to sign it. He accepted the money.

VI. *Even If the Waiver Were Defective, Plaintiff's Substantive Claims Are Legally Deficient.*

As noted in Buerkle's brief before the District Court and the Court of Appeals, Mr. Lancaster's substantive claims are without merit. Therefore, even if the waiver was invalidated, Buerkle was entitled to summary judgment on the merits.

CONCLUSION

There is no conflict among the circuits regarding waivers under the ADEA. In contrast, the Eighth Circuit, the Sixth Circuit, and the EEOC all agree that unsuper-

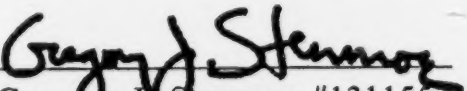
vised waivers of ADEA claims are permissible under the applicable law of this Court and statutory intent. Although this Court has not decided the issue, the issue is not one of special importance involving fundamental constitutional rights. This Court previously determined that this issue was not of sufficient import to warrant review when it denied certiorari in *Runyan v. National Cash Register Corp.* Moreover, the Court of Appeals correctly interpreted the decisions of this Court in deciding that ADEA rights may be waived by a private unsupervised release. Finally, the waiver was free and voluntary regardless of the standard that is applied. Plaintiff is merely seeking another hearing on issues that have been resolved twice against him.

For the reasons stated herein, respondent respectfully requests the petition for certiorari be denied.

Dated this 20th day of May, 1987

Respectfully submitted,

BRIGGS AND MORGAN

By 
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